



U.S. MERIT SYSTEMS PROTECTION BOARD

Case Report for February 18, 2022

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COURT DECISIONS

PRECEDENTIAL:

Case Name: Standley v. Department of Energy
Tribunal: U.S. Court of Appeals for the Federal Circuit
Case Number: No. [21-2149](#)
MSPB Docket Number: DC-1221-20-0788-W-1
Issuance Date: February 16, 2022

COURT REVIEW

- MISCELLANEOUS (SUBSTANTIAL EVIDENCE)

Dr. Standley was a General Engineer in the National Nuclear Security Administration, Office of Defense Nuclear Nonproliferation Research and Development (DNN), Office of Nuclear Detonation Detection. He filed an individual right of action appeal, claiming that the DNN Associate Assistant Deputy Administrator and the DNN Assistant Deputy Administrator retaliated against him for his efforts to change agency policy (regarding a mission to provide space-based nuclear detection) by not selecting him for any of three agency Director positions posted in 2014, 2015, and 2017. The administrative judge denied corrective action, finding that Dr. Standley failed to meet his burden to prove that agency personnel perceived him as a whistleblower. The

Board's decision became final when neither party filed a petition for review.

Before the court, Dr. Standley alleged that the Board failed to consider certain evidence indicating that agency, the DNN Associate Assistant Deputy Administrator, and the DNN Assistant Deputy Administrator perceived his activities to be protected and the Board failed to consider certain evidence indicating that the agency acted fraudulently. The court found that the administrative judge considered and rejected Dr. Standley's interpretation of the evidence, and the administrative judge's analysis was supported by substantial evidence. The court affirmed the Board's decision to deny corrective action.

NONPRECEDENTIAL:

Fleming v. Merit Systems Protection Board, No. [21-2080](#) (Fed. Cir. Feb. 15, 2022) (AT-844E-21-0223-I-1): Ms. Fleming applied for disability retirement in 2020. The Office of Personnel Management (OPM) issued a final decision denying her application. Thereafter, Ms. Fleming appealed to the Board, and OPM advised that it had rescinded its final decision and stated that it would issue a new decision. The Board dismissed the appeal for lack of jurisdiction because OPM had rescinded its final decision and indicated that it would issue a new decision. The court affirmed the Board's decision.

Haq v. Office of Personnel Management, No. [21-1536](#) (Fed. Cir. Feb. 11, 2022) (DC-0842-20-0798-I-1): Ms. Haq requested a refund of her retirement contributions in July 2004, and the refund was authorized in November 2004. In June 2020, Ms. Haq applied for a deferred retirement annuity, but OPM denied her claim because she had previously requested a refund of her retirement contributions. Ms. Haq appealed to the Board. The administrative judge affirmed OPM's decision to deny her claim for a deferred retirement annuity. The administrative judge further found that the doctrine of laches barred Ms. Haq's claim because her nearly 16-year delay materially prejudiced OPM's ability to access relevant records from the Department of the Treasury, which maintains records for only 7 years. Ms. Haq appealed to the court, which found that OPM "suffered material defense prejudice" because of Ms. Haq's delay in inquiring about her allegedly missing refund payment. The court affirmed the Board's conclusion that the doctrine of laches barred Ms. Haq's request for a deferred retirement annuity.

Barnes v. General Services Administration, No. [21-1799](#) (Fed. Cir. Feb. 11, 2022) (DC-0752-20-0202-I-2): Rule 36 affirmance.

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